IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 1306 of 2005

Between:

Peela Apparao Naidu, S/o. Kanakaiah Naidu,
R/o. 55-2-37, Venkojipalem, H.B. Colony Post,

Visakhapatnam - 22.

..... PETITIONER

AND

The Visakhapatnam Municipal Corporation,

Rep by its Commissioner, Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ or direction preferably writ of mandamus declaring the action of the respondent and its staff in disturbing the possession of the petitioner on 19-1-2005 without any notice and removing trees and taking steps to lay the road through part of the land of the petitioner our of total extent i.e. Ac. 1-55 cents in Sy.No. 18/2 situated at Madelapalem main village H/o. Venkojipalem (V) Visakhapatnam Mandal & District as illegal, arbitrary, and violative of principles of natural justice and consequently direct the respondent to pay full compensation of the petitioner then proceed with the laying of road.

Counsel for the Petitioner: MR.KOWTURU VINAYA KUMAR

Counsel for the Respondent: MR.T.S.VENKATARAMANA (SC for M.C.Visakhapatnam)

The Court at the stage of admission made the following :

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ORDER:

The petitioner claims to be the absolute owner of the land admeasuring Ac.1.55 cents in S.No.18/2 situated at Madelapalem main village H/o Venkojipalem, Visakhapatnam Mandal and District. It is stated that when the respondent-Corporation was attempting to lay a road through the land of the petitioner without following the procedure as prescribed under Land Acquisition Act, the petitioner has earlier filed a writ petition in W.P.No.488 of 1999 and the same was allowed by this Court on 07.09.2000 with a direction to the respondent not to proceed with the laying of the road without following due process of law. It appears that thereafter when the respondent has proposed acquisition of part of the petitioner's land for the purpose of road-widening, the son of the petitioner submitted a representation to the respondent on 21.12.2004 stating that he is willing to handover part of the land for widening of road subject to providing alternative land and also compensation at prevailing market value plus 30% solatium and 12% Additional market value and also compensation for the structures on the ground. The petitioner states that though in the said representation they mentioned that the road widening may be taken up only after payment of compensation, the staff of the respondent-Corporation highhandedly proceeded with the laying of the road and in the said process on 19-01-2005, removed 25 trees consisting of mango and other various trees forcibly and also demolished the compound wall of the house. Hence this writ petition seeking a declaration that the action of the respondents in disturbing the possession of the petitioner without any notice is arbitrary and illegal.

I have heard learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent-Corporation.

As can be seen from the material on record, the petitioner has also expressed his willingness for handing over a portion of the land required for the purpose of laying of the road, however, subject to providing other alternative land as well payment of compensation at prevailing market value plus 3% solatium and 12%

Additional Market Value. It is also not in dispute that the respondent-Corporation has already taken possession for the purpose of laying the road.

Having regard to the facts and circumstances and particularly in view of the fact that the land was utilised for the purpose of laying a Road, I deem it appropriate to dispose of the writ petition with a direction to the respondent-Corporation to pay the compensation under Section 146 of the Municipal Corporation Act, if the petitioner is willing for negotiations and in case it is not possible to pay the compensation on the basis of the negotiations, the respondents shall initiate the proceedings as provided under Section 147 of the Hyderabad Municipal Corporations Act, 1955 by issuing a notification under the Land Acquisition Act. The above said exercise shall be completed as expeditiously as possible, preferably within a period of three months from the date of receipt of this order.

The writ petition is accordingly disposed of. No costs.

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01.02.2005

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To

1. The Commissioner, Visakhapatnam Municipal Corporation,

Visakhapatnam.

2. 2CD copies